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Order on Defendants' Motion to Compel against Non-Party Wells Fargo (Global Aerospace Inc.)

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



GLOBAL AEROSPACE, INC.,

Plaintiff,

v.

LIMA DELTA COMPANY, TRIDENTAS,
SOKICAT, TRIDENT AVIATION
SERVICES, LLC, TRIDENT AVIATION
SERVICES LLC, TRIDENT AVIATION
SERVICES, INC., SOCIKAT, SOKICAT – CN
AVIATION, SOCIKAT – CN AVIATION, and
CN AVIATION,

Defendants.

Civil Action File No.
2012CV214772

COPY

ORDER ON DEFENDANTS' MOTION TO COMPEL AGAINST NON-PARTY WELLS FARGO

This matter is before the Court on Defendants' Motion for Order Compelling Discovery Against Non-Party Wells Fargo Insurance Services U.S.A., Inc. ("Wells Fargo").¹ Upon consideration of the briefs, and the record of the case, the Court finds as follows:

Defendants first served non-party Wells Fargo with their First Request for Production of Documents (the "Requests") on December 7, 2012 which included 110 individual Requests. Though Wells Fargo submitted responses and more than 15,000 pages of responsive documents and despite attempts to resolve the discovery issues, Defendants filed a Motion to Compel on February 13, 2013. Resolution of this Motion was stayed pending resolution of an interlocutory appeal on an unrelated issue. Now, consistent with the Court's Order dated April 25, 2014, Defendants have resubmitted the issues raised in the February 2013 Motion.

¹ This case involves an aircraft accident in the Democratic Republic of Congo and the extent of coverage under an insurance policy that was underwritten by Plaintiff Global Aerospace, Inc. and procured by Defendants through Wells Fargo Insurance Services, Inc.

The Court finds that Defendants have failed to articulate a basis for compelling any additional discovery from Wells Fargo. For many Requests, Wells Fargo has represented that it has produced all non-privileged, responsive documents in its possession, custody, or control, subject to its stated objections.² Further, Wells Fargo has represented for other Requests that it does not have responsive documents in its possession, custody, or control, subject to its stated objections.³ For these particular Requests, Defendants argue that it cannot verify these responses because Wells Fargo made no attempt to state which exact documents of the more than 15,000 pages produced, are responsive to which particular Request. The Court will not impose such a burden on Wells Fargo. Wells Fargo has represented that it has produced these documents as they were maintained in the normal course of business. It is not obligated to arrange these documents in a manner that most effectively supports Defendants' case. Therefore, Defendants' Motion to Compel as to these Requests is **DENIED**.

Defendants next argue that for several Requests, Wells Fargo has responsive documents that have not been produced. According to Defendants, Wells Fargo has allegedly refused to produce documents in its possession that are responsive to Defendants' Request Numbers 7,8,16, 21, 25, 51, 51, 66, 67, 79, 80, 84, 85, 86, 102, 103, 104, 105, 107 and 108. Generally, Defendants' state that the subject matter of these documents are:

(1) Wells Fargo's litigation hold policy; (2) Wells Fargo insurance brokerage manuals, policies, procedures and training materials; (3) information pertaining to other insurance policies Wells Fargo has procured through Global and Global's treatment of claims under such policies; (4) Wells Fargo's representations to customers and the public as reflected in advertising; (5) Wells Fargo's regulatory

² Requests 1-5, 9-15, 17-20, 22-24, 26-40, 42-49, 53-65, 69-70, 77-78, 106, and 109-110.

³ Requests 50, 52, 68, 71-73, 81-83, and 93-100.

approvals for conducting business in Africa, Delaware and Georgia; (6) other policies of insurance procured by Wells Fargo for intercontinental-range business aircraft; and (7) documents which Wells Fargo believes support various contentions made by Plaintiff.

See Defs.' Br. at 5. Having reviewed Wells Fargo's objections to these Requests, the Court finds the objections well-founded. Requests 7, 8, 16, 21, 25, 102, 103, 104, 105, and 108 all require Wells Fargo to come to a legal conclusion and then produce documents that might support that legal conclusion. For example:

REQUEST FOR PRODUCTION NO. 7: If you contend that the operation of the Aircraft in the DRC caused, legally, proximately, operationally, technically, or otherwise, the Accident as described in Plaintiff's Complaint, produce all documents relating to, concerning, and/or supporting each contention.

In response, Wells Fargo stated that as a non-party it does not make any contentions regarding the cause of the Accident. The Court finds this to be a valid objection.

Turning to Requests 51, 66, 67, 79, 80, 85, 86, and 107, Wells Fargo objected to these requests, stating that they were overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. This Court agrees. For example, Defendants requested the following:

REQUEST FOR PRODUCTION NO. 80: Produce all documents which constitute or reflect advertising and marketing by you of insurance products and services, both to existing and potential policyholders, as well as within the insurance industry, including insurers, underwriters, reinsurers, and insurance wholesalers, including, but not limited to, current and past website content on your website between 2002 to date, marketing correspondence, print publication advertisements and advertisements placed by you on websites or media in any form of others between 2002 to date.

...

REQUEST FOR PRODUCTION NO. 86: Produce any and all of your agent or broker training materials, and any revisions or updates thereto in use by you from 2002 to date.

Wells Fargo has stated that it took a broad approach to collecting and producing all documents related to the Defendants, the Defendants' aircrafts, including the aircraft at issue, the policy at issue, the policies relating to any of Defendants' aircrafts, and/or the accident. Requiring non-party Wells Fargo to produce a broad scope of documents related more generally to its policies and practices as an insurance brokerage firm or its dealings with other companies or individuals is not reasonably calculated to lead to the discovery of admissible evidence. O.C.G.A. § 9-11-26(b)(1).

Finally, Defendants argue that Wells Fargo's responses to Requests 6, 41, 87, 88, 89, 90, 91, 92, and 101 are inadequate. Other than noting that Request 6 asks for documents "relating to, and/or concerning your state of incorporation and where you have conducted business with the Defendants" and asserting that Wells Fargo's response that it has no documents is inadequate, *see* Defs.' Br. at 5, Defendants do not elaborate on the shortcomings of these responses.⁴ As to Request 6 specifically, Wells Fargo states in its response that it is "an insurance brokerage firm incorporate in the State of North Dakota with its headquarters in Chicago, Illinois" and refers Defendants to documents previously produced. It objects to the extent that the Request seeks documents that are not reasonably calculated to lead to the

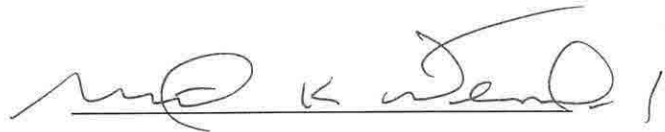
⁴ This allegation falls short of the requirements for motions to compel found in Uniform Superior Court Rule 6.4 which requires the complaining party to state its request, the response, the reason the response is inadequate, and the grounds for the motion. The rule specifically states that "[s]uch objections and grounds shall be addressed to the specific . . . request for production and may not be made generally." *See* Unif. Sup. Ct. R. 6.4(A)(4) (emphasis added).

discovery of admissible evidence and is vague. Again, Wells Fargo's responses to this Request are adequate.

Wells Fargo, as a non-party, has responded to 110 individual Requests for Production, and has produced more than 15,000 pages of documents related to the issues raised in this lawsuit. Defendants will have the opportunity to depose two Wells Fargo employees, Lauren Hanes and Dean Anderson, on June 25 and 26, 2014. Defendants have failed to show that Wells Fargo has not complied with its obligations under the applicable discovery rules.

ACCORDINGLY, Defendants' Motion to Compel Against Non-Party Wells Fargo is **DENIED.**

SO ORDERED this 4th day of June, 2014.

A handwritten signature in black ink, appearing to read 'Melvin K. Westmoreland', written over a horizontal line.

MELVIN K. WESTMORELAND,
SENIOR JUDGE, on behalf of

ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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